

USDC SDNY

DOCUMENT

ELECTRONICALLY FILED

DOCS

DATE FILED: 6/26/08

EDWARD D. FAGAN Esq.

JUN 26 2008

The Penn Plaza, 23rd Floor, NY, NY 10001, Tel:

CHAMBERS Email: [faganlawint@aim.com](mailto:faganlawint@aim.com) (Official Email Address for Court Documents)ANDREW J. PECK Email: [faganlaw.teachers@gmail.com](mailto:faganlaw.teachers@gmail.com) (Email Address for Teachers4Action Case)

Via Fax (212) 805-7933

Honorable Andrew J. Peck, USMJ  
 United States District Court  
 Southern District of New York  
 500 Pearl Street, Chambers  
 New York, NY 10007

June 26, 2008

## MEMO ENDORSED - p2

Re: Teachers4Action et al v. Bloomberg et al. 08-cv-548 (VM)(AJP)

Honorable Judge Peck:

I write to request that the Court "So Order" this letter directing Defendant New York City Department of Education ("DOE") to provide – by 5 pm tomorrow June 27, 2008 - the hard copies of the document(s) embodied in Your Honor's June 19<sup>th</sup> Order (Doc. # 67).

Prior to seeking Court intervention, I tried, without success, to resolve the issues with counsel for Defendant DOE. (See email exchanges on June 20<sup>th</sup> (Exhibits 1, 2 & 3), reminder emails and exchange on June 23<sup>rd</sup> (Exhibit 4, 5 & 6) and reminder email on June 24<sup>th</sup> (Exhibit 7)).

As of the writing of this letter, I have yet to receive the hard copy of the document(s) or confirmation of when I can pick up the hard copy of the document(s). The reason for insisting on the hard copy - and not an email version of the document - is that the original of another document Defendant DOE was Ordered to produce has already gone missing and cannot be located (i.e. the Original of the April 4, 2008 Alleged Fax Cover Sheet of The Anonymous Emails which was the subject of the May 22, 2008 deposition of Theresa Europe).<sup>1</sup>

Plaintiffs pray that, after reviewing this submission and supporting exhibits, the Court "So Order" this letter and direct Defendant DOE to produce a hard copy of the subject document(s) by June 27, 2008 at 5 pm and preserve the original document(s) for later authentication.

As always, Plaintiffs thank the Court for its consideration in this regard.

Respectfully submitted,

Edward D. Fagan

<sup>1</sup> At the May deposition of Ms. Europe, Plaintiffs learned for the first time that the Original of The April 4, 2008 Alleged Fax Cover Sheet of The Alleged Anonymous Emails could not be produced. The explanation given was that Ms. Europe emailed the original document to DOE counsel and after that point neither DOE, nor DOE counsel could locate or produce the Original, as it allegedly existed on April 4, 2008. The original document was allegedly not preserved by Defendant DOE, or it was lost or it was misplaced or it could not be found or Defendant DOE could not identify with a certainty which document it is or which is/was the alleged original. This spoliation or discovery related issues will be the subject of an upcoming Motion. It is included in this letter to support Plaintiffs' insistence that the hard copy of the actual original document(s) as identified by Ms. Europe on May 5, 2008 at the Bayzava 3020a hearing that has/have been Ordered to be produced are in fact produced to avoid a similar problem related to evidence preservation and authentication of evidence. And, it is this evidence that is part of Defendant DOE's claims Plaintiffs are mistaken about their beliefs as to what their due process rights are in 3020a hearings and/or that to the extent there is any possible misunderstanding between language in Article 21-g of the Collective Bargaining Agreement and requirements of NYS Ed. Law 3020a or 8 NYCRR R2-1 et seq., such "misunderstanding", if any, was expressly clarified by Defendant UFT in the document(s) which Defendant DOE has been ordered, but has yet, to produce.

EDWARD D. FAGAN ESQ.

Hon. Andrew J. Peck Esq. - June 26, 2008 Letter - Page 2  
Re: Teach4Action et al v. Bloomberg et al. 08-CV-548 (VM)(AJP)

EDF/lst  
attachments

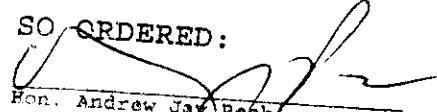
Cc: Blanche Greenfield Esq. - For NYC Defendants - Fax (212) 788-8877  
Charles Meerdler Esq. - For Defendants UFT, Weingarten & Combier - Fax (212) 806-6006

## MEMO ENDORSED

6/26/08

The petitioners shown by both H's' General DOJ Counsel - this letter is to afford counsel & my NY City offices with a reasonable regard to their right of access. If another defendant sends a fax or e-mail to counsel or legal office, they are being to be contacted. This is not the obligation of counsel to cooperate - just to be up to the Court's time and whims over Milner.

SO ORDERED:

  
Hon. Andrew Jay Peck  
United States Magistrate Judge

Mfj: AJP  
CER  
ZNP  
Mayers

BY FAX

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

**Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036**

**Dated: June 26, 2008**

**Total Number of Pages: 3**

<b>TO</b>	<b>FAX NUMBER</b>
Edward D. Fagan, Esq.	646-304-6446 or 646-417-5558
Blanche Greenfield, Esq.	212-788-8877
Charles G. Moerdler, Esq.	212-806-2647
Dina Kolker, Esq.	212-806-6006

## **TRANSCRIPTION:**

**MEMO ENDORSED 6/26/08**

**The pettiness shown by both plaintiffs' counsel and DOE counsel in this letter and the attached emails is why the legal profession is held in such low regard. Work this out. If another application is made on this issue, one or both counsel are likely to be sanctioned. This is not kindergarten and counsel are to cooperate – and not take up the Court's time with whining over trivia.**

**Copy to: Judge Victor Marrero**